



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 21, 1998

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-0195

Dear Ms. Calabrese:

You ask this office to partially reconsider our ruling in Open Records Letter No. 97-2467 (1997). Your request for reconsideration was assigned ID# 112769.

The City of Houston (the "city") received a request for a variety of information "concerning a robbery of K & R grocery store, at 6902 North Wayside Drive, on March 30, 1985," an incident involving the requestor's client. In Open Records Letter No. 97-2467 (1997), this office concluded in part that the city could not withhold the requested information under section 552.103(b) of the Government Code as litigation regarding this matter is not anticipated or pending. In your request for reconsideration, you contend that "[t]he statutory language of section 552.103(b) contains no requirement that a postconviction appeal be "active or pending" for the state or political subdivision to be considered a party to criminal litigation."

You contend that information regarding Mr. Henson-El is excepted from disclosure under section 552.103(a) because section 552.103(b) provides that "[f]or purposes of [section 552.103], the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court." We note, however, that section 552.103(b) is not a separate exception to disclosure. It merely provides a time frame for the section 552.103(a) exception.¹ Open Records Decision No. 518 (1989) at 5. Unless a governmental body has met its burden of showing that litigation is pending or reasonably anticipated under section 552.103(a), section 552.103(b) is not applicable. *Id.*

¹The codification of the Open Records Act in the Government Code is a nonsubstantive revision. Acts 1993, 73d Leg., ch. 268, § 47. Although former section 3(e), V.T.C.S. art. 6252-17a, appears in the codification as a subsection of Government Code section 552.103, it was not one of the enumerated exceptions to public disclosure under section 3(a) of V.T.C.S. article 6252- 17a.

We, therefore, affirm Open Records Letter No. 97-2467 (1997). If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Loretta R. DeHay".

Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

Ref.: ID# 112769

cc: Mr. Michael Palmer
ACLU of Texas
P.O. Box 132047
Houston, Texas 77219